

REMARKS/ARGUMENT

Claims 1-28 are pending in the present application. Claims 5-6 and 23-24 are currently amended. Claims 27-28 are new. Support for new claims 27-28 can be found, for example, in ¶¶ [0031]-[0033] of the specification as published in US 2007/0031975. No new matter has been added.

Reconsideration of the claims based on the below comments is respectfully requested.

Rejection of Claims 5 and 23 Based on 35 U.S.C. §112

In the November 26, 2007 non-final Office Action, claims 5 and 23 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 5 and 23 are amended to overcome the rejection and should be in a condition for allowance. Furthermore, claims 6 and 24, which respectively depend from claims 5 and 23, are also amended to conform with the amendments to claims 5 and 23, and thus, should remain in a condition for allowance.

Anticipation Rejection of Claims 1, 3-9, 11, 13, 14, 16-18, 21-24 and 26 Based on Frischauf

In the November 26, 2007 non-final Office action, claims 1, 3-9, 11, 13, 14, 16-18, 21-24 and 26 were rejected under 35 U.S.C. § 102(b) as being anticipated by Frischauf U.S. Patent No. 5,371,020 (“Frischauf”).

Independent Claims 1, 11, and 19

Amended independent claims 1, 11, and 19 generally recite, *inter alia*, a first inlet surface and a second inlet surface aligned to form a fill capillary gap. Frischauf does not disclose, teach or suggest a format or a method of forming a format with such a feature.

Frischauf’s system differs from the claimed invention as described below. Frischauf discloses a measuring chamber 4000 consisting of two identical halves 4001 and 4002 assembled by pins 4005 and 4006 that engage recesses 4007 and 4008 with a line of material 4009 that lies

along the edge of a longitudinal open conduit 4010 with a through hole 4012 directed perpendicular to the conduit 4010. Column 6, line 53 – Column 7, line 2. Frischauf also describes a measuring chamber device 40 for determining the CO₂ content in a sample of whole blood in which the blood sample is transferred directly from a patient to the measuring chamber device. Column 10, lines 33-39; FIG. 8. Frischauf then describes the body of the measuring chamber device being adapted for connection to a blood sampling needle 43 and the body 41 also being adapted for coupling to a traditional plunger syringe which may serve as a sampling aid in special situations. Column 10, lines 43-52; FIG. 8. It is noteworthy that Frischauf nowhere describes two inlet surfaces that are a part of two separate components in which the inlet surfaces align to form a capillary gap that can fill without the need of additional pressures. Thus, Frischauf fails to disclose a first inlet surface and a second inlet surface aligned to form a fill capillary gap, as generally recited in amended claims 1, 11, and 19.

For at least the reasons cited herein, amended independent claims 1, 11, and 19 are not and cannot be anticipated by Frischauf, and thus, should be in a condition for allowance.

Dependent Claims 3-9

Claims 3-9, which depend from claim 1, are not anticipated by Frischauf for at least the reasons discussed above in connection with claim 1. Thus, claims 3-9 should also be in a condition for allowance.

Furthermore, the Office Action fails to identify a number of recited elements from the dependent claims. For example, the citations to Frischauf do not disclose first and second slots disposed on first and second side surfaces of the first format component or third and fourth slots disposed on third and fourth sides of the second format component, as recited in claims 5 and 6.

Dependent Claims 13-14 and 16-18

Claims 13-14 and 16-18, which depend from claim 11, are not anticipated by Frischauf for at least the reasons discussed above in connection with claim 11. Thus, claims 13-14 and 16-18 should also be in a condition for allowance.

Furthermore, the Office Action fails to identify a number of elements from the dependent claims. For example, the citations to Frischauf do not disclose molding the format component

between two ribbons, as recited in claim 14. In addition, the Office Action provides inadequate support for interpreting a sample, as described in Frischauf, to be a reagent, as recited in claim 16. Interestingly, Frischauf describes itself as disclosing a method and a system for photometric in vitro determination of a blood gas parameter in a blood sample. Column 3, lines 16-18. However, it is apparent from independent claim 11—describing a method of forming a format for the optical analysis of *a sample*—and its dependent claim 16—describing the element of applying *a reagent*—that Frischauf fails to disclose applying a reagent, as recited in claim 16.

Dependent Claims 21-24 and 26

Claims 21-24 and 26, which depend from claim 19, are not anticipated by Frischauf for at least the reasons discussed above in connection with claim 19. Thus, claims 21-24 and 26 should also be in a condition for allowance.

Furthermore, the Office Action fails to identify a number of recited elements from the dependent claims. For example, the citations to Frischauf do not disclose first and second slots disposed on first and second side surfaces of the first format component or third and fourth slots disposed on third and fourth sides of the second format component, as recited in claims 23 and 24.

Obviousness Rejection of Claims 2, 10, 12, 15, 20 and 25 Based on Frischauf

In the November 26, 2007 non-final Office Action, claims 2, 10, 12, 20 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Frischauf. Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Frischauf in view of Foldenauer U.S. Patent No. 5,035,494 (“Foldenauer”).

As discussed above, since all the elements of independent claims 1, 11 and 19 cannot be found in Frischauf, a *prima facie* case of anticipation has not be established for the claimed invention. Furthermore, the rejection of dependent claims 2, 10, 12, 15, 20 and 25 based on Frischauf does not overcome the deficiencies discussed above for the anticipation rejections of independent claim 1, 11 and 19, and thus, a *prima facie* case of obviousness has not been established. In this regard, Frischauf does not disclose or suggest the claimed invention.

Foldenauer does not overcome the deficiencies of claim 15. Foldenauer describes a cover member 11 with a plurality of cover slips 13 with the cover member 11 in position above a base member 12. The Office Action equates the plurality of slips 13 on the cover member 11 as being a chain formation. *See* p. 10. Assuming *arguendo* that the Office Action has properly equated these two elements, the plurality of slips in Foldenauer should then be equated with the format component element of claim 15. However, such an equation teaches away from a format component having a format component pin because the slip covers in Foldenauer are shown without pins. In fact, the slips 13 in Foldenauer are described as being very thin (column 3, lines 6-9), and thus, not suitable to include a pin. Rather, Foldenauer teaches that round pegs 16 extend downwardly from supporting elements 14. Therefore, Foldenauer does not overcome the deficiencies of Frischauf, and thus, a *prima facie* case of obviousness has not been established.

For at least these reasons, claims 2, 10, 12, 15, 20 and 25 are not rendered obvious over Frischauf or Frischauf in view of Foldenauer. Thus, claims 2, 10, 12, 15, 20 and 25 should also be in a condition for allowance.

New Claims 27 and 28

New claims 27 and 28 depend from independent claims 1 and 19, respectively. The new claims generally recite, *inter alia*, a reagent applied to at least one of a first read surface and a second read surface. Neither of Frischauf and Foldenauer, either alone or in combination, appear to recite a reagent applied to a first or second read surface. For at least these reasons, claims 27 and 28 should also be in a condition for allowance.

CONCLUSION

Applicants submit that claims 1-28 are in condition for allowance and action toward that is respectfully requested. If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

It is believed that no additional fees are due except a \$120 extension fee and a \$50 fee for each of new dependent claims 27 and 28; however, should any additional fees be required

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(except for payment of the issue fee), the Commissioner is authorized to deduct the fees from the Nixon Peabody Deposit Account No. 50-4181, Order No. 247082-000094USPX.

Respectfully submitted,

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